



Public Hearing Supplemental Information
Customs Border Protection Post Hearing Submission
(5 Pages)



**U.S. Customs and
Border Protection**

October 31, 2008

Ms. Michele Beckjord
Hearing Officer
National Transportation Safety Board
Office of Highway Safety
4760 Oakland Street Suite 500
Denver, Colorado 80239

Dear Ms. Beckjord:

Enclosed is the signed Acknowledgement and Certification document regarding my testimony at the National Transportation Safety Board Hearing on October 7, 2008. I have no correction to offer on my direct testimony. However, I have enclosed a clarification statement to provide a more concise representation of U.S. Customs and Border Protection's regulatory framework and the differences in the treatment of instruments of international traffic versus other vehicles that are imported and the applicability of the Federal Motor Vehicle Safety Standards. I hope this helps all the parties involved to have a clearer picture of our organization's responsibilities.

If you have any questions please do not hesitate to contact me directly.

Sincerely,

A black rectangular redaction box covering the signature of Michael Craig.

Michael Craig
Chief, Interagency Requirements Branch
Office of International Trade

Enclosures

**Clarification of CBP Enforcement Authorities Regarding the Accident Bus
NTSB
Docket # 68754**

Under the Customs laws, the bus that was involved in the January 2, 2008 accident was not "imported", but qualified as an "Instrument of International Traffic", under 19 CFR 10.41.

§ 10.41 Instruments; exceptions.

(a) Locomotives and other railroad equipment, trucks, buses, taxicabs, and other vehicles used in international traffic shall be subject to the treatment provided for in part 123 of this chapter.

Part 123 is entitled Customs Relations with Canada and Mexico and has two provisions that are relevant to this situation:

§ 123.14 Entry of foreign-based trucks, busses, and taxicabs in international traffic.

(a) *Admission without entry or payment of duty.* Trucks, busses, and taxicabs, however owned, which have their principal base of operations in a foreign country and which are engaged in international traffic, arriving with merchandise or passengers destined to points in the United States, or arriving empty or loaded for the purpose of taking out merchandise or passengers, may be admitted without formal entry or the payment of duty. Such vehicles shall not engage in local traffic except as provided in paragraph (c) of this section.

(b) *Deposit of registration by vehicle not on regular trip.* In any case in which a foreign-based truck, bus, or taxicab admitted under this section is not in use on a regularly scheduled trip, the port director may require that the registration card for the vehicle be deposited pending the return of the vehicle for departure to the country from which it arrived, or the port director may take other appropriate measures to assure the proper use and departure of the vehicle.

(c) *Use in local traffic.* Foreign-based trucks, busses, and taxicabs admitted under this section shall not engage in local traffic in the United States unless the vehicle comes within one of the following exceptions:

(1) The vehicle may carry merchandise or passengers between points in the United States if such carriage is incidental to the immediately prior or subsequent engagement of that vehicle in international traffic. Any such carriage by the vehicle in the general direction of an export move or as part of the return of the vehicle to its base country shall be considered incidental to its engagement in international traffic. An alien driver will not be permitted to operate a vehicle under this paragraph, unless the driver is in compliance with the applicable regulations of the Immigration and Naturalization Service.

(2) A foreign-based truck trailer may carry merchandise between points in the United States on its departure for a foreign country under the same conditions as are prescribed for "other foreign railroad equipment" in §123.12(a)(2).

(d) *Penalty for improper use.* The use of any vehicle referred to in this section in violation of this section may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

And,

§ 123.16 Entry of returning trucks, busses, or taxicabs in international traffic.

(a) *Admission without entry or payment of duty.* Trucks, busses, and taxicabs, whether of foreign or domestic origin, taking out merchandise or passengers for hire or leaving empty for the purpose of bringing back merchandise or passengers for hire shall on their return to the United States be admitted without formal entry or the payment of duty upon their identity being established by State registration cards.

(b) *Use in local traffic.* Trucks, busses, and taxicabs in use in international traffic, which may include the incidental carrying of merchandise or passengers for hire between points in a foreign country, or between points in this country, shall be admitted under this section. However, such vehicles taken abroad for commercial use between points in a foreign country, otherwise than in the course of their use in international traffic, shall be considered to have been exported and must be regularly entered on return.

As an instrument of international traffic and meeting the qualifications contained in Part 123.16 (a) the bus in question was exempt from the formal entry requirement and the payment of duty.

One additional CBP regulation also factors into this specific situation, 19 CFR 12.80 which applies to the declaration requirements of the Federal Motor Vehicles Safety Standards (FMVSS):

§ 12.80 Federal motor vehicle safety standards.

(a) *Standards prescribed by the Department of Transportation.* Motor vehicles and motor vehicle equipment manufactured on or after January 1, 1968, offered for sale, or introduction or delivery for introduction in interstate Commerce, or importation into the United States are subject to Federal motor vehicle safety standards ("safety standards") prescribed by the Secretary of Transportation under sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1392, 1407) ("the Act"), and set forth in 49 CFR part 571. A motor vehicle ("vehicle") or item of motor vehicle equipment ("equipment item"), manufactured on or after January 1, 1968, is not permitted entry into the Customs territory of the United States unless (with certain exceptions set forth in paragraph (b) of this section) it is in conformity with applicable safety standards in effect at the time the vehicle or equipment item was manufactured.

(b) *Requirements for entry and release.* (1) Unless the requirement for filing is waived by the port director as provided for in paragraph (f) of this section, each vehicle or equipment item offered for introduction into the Customs territory of the United States shall be denied entry unless the importer or consignee files with the entry a declaration, in duplicate, which declares or affirms one of the following:

Section (f) goes on to state:

(f) *Waiver of declaration requirements.* The requirement that a declaration be filed under paragraph (b)(1)(i), (b)(1)(ii), or (b)(1)(v) of this section as a condition to the introduction of a vehicle or equipment item into the Customs territory of the United States may be waived by the port director for a United States, Canadian, or Mexican registered vehicle arriving via land borders.

Based on the facts provided, the accident bus was exempt from the FMVSS declaration requirement.

In August 2005, the Department of Transportation (DOT) withdrew its prospective rulemaking originally published in March 2002, seeking public comment on proposed regulations and policies regarding the enforcement of the statutory prohibition on the importation of commercial vehicles that were non-compliant with the Federal Motor Vehicles Safety Standards (FMVSS). Had this rulemaking not been withdrawn, the proposed DOT regulation would have made instruments of international traffic subject to compliance with the FMVSS whenever they crossed the U.S. border.

The CBP penalty provisions for willful violations of the FMVSS are contained in 19 CFR 12.80(g):

(g) Vehicle or equipment item introduced by means of a fraudulent or false declaration. Any person who enters, introduces, attempts to enter or introduce, or aids or abets the entry, introduction, or attempted entry or introduction, of a vehicle or equipment item into the Customs territory of the United States by means of a fraudulent entry declaration, or by means of a false entry declaration made without reasonable cause to believe the truth of the declaration, may incur liabilities under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

Depending upon the circumstances, violations of 19 USC 1592 generally result in the violator incurring a civil penalty and not seizure or forfeiture of the property.

If the bus had not been considered an instrument of international traffic, as defined in 19 CFR 10.41, it could have been properly entered by an importer as outlined in 19 CFR 12.80. At that point the importer or their agent would have filed a CBP formal entry along with the FMVSS declaration (DOT Form HS-7) with CBP at the port, and CBP officers would have had an opportunity to physically inspect the bus for the presence of the FMVSS compliance plate or sticker. If there were any anomalies detected, CBP would detain the bus at the import lot and consult with the National Highway Traffic Safety Administration office in Washington to determine the proper disposition.

Submitted by:


Michael Craig

Chief, Interagency Requirements Branch

Office of International Trade

U.S. Customs and Border Protection

October 31, 2008